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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 5 and 6

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al.,
Petitioners,

v.

SAX ENTERPRISES, INC., et al.;
HARRY LEVY, et al., d/b/a
SHERRY FRONTENAC HOTEL, et al.,
Respondents.

On Writs of Certiorari to the Supreme Court of Florida

BRIEF FOR RESPONDENTS

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On Writs of Certiorari to the Supreme Court of Florida

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinions of the Supreme Court of Florida which bear upon the questions presented and which on one facet or another, are involved in this petition, are reported, as follows:

1. *Sax Enterprises, Inc.* v. *Hotel Employees Union,* 80 So. 2d 602.
2. *Boca Raton Club* v. *Hotel Employees Union,* 80 So. 2d 680.
3. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 81 So. 2d 731.
4. *Boca Raton Club* v. *Hotel Employees Union,* 83 So. 2d 11.

5. *R. S. Levy* v. *Hotel Employees Union,* 83 So. 2d 852.

6. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 84 So. 2d 583.

7. *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415.

8. *Per curiam* opinions of the cases involved are reported in 93 So. 2d 583-600.

FLORIDA STATUTES INVOLVED

447.01 Regulating labor unions; state policy:

(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.

447.03 Employees' right of self-organization:

Employees shall have the right to self-organization to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

447.09 Right of franchise preserved; penalties—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an

employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievances or violations of law to any public officials and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those

guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

447.11 Actions and suits; labor organizations as parties:

Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

447.13 Right to strike preserved:

Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.

447.14 Penalties:

Any person or labor organization who shall violate any of the provisions of this chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

QUESTIONS PRESENTED

In our view, the record in these cases does not support the factual recitations contained in the questions presented in the Petitioner's Brief. Therefore, we take the liberty of re-stating the questions, predicated upon our understanding of the record before the Supreme Court of Florida and that part of that record now before the Supreme Court of the United States.

1. Whether a State Court may enjoin picketing where

(a) the objective sought to be achieved by the pickets and the labor union they represent, is unlawful and contrary to the public policy of the State;

(b) the picket signs are untruthful;

(c) the picketing is accompanied by acts of violence or near violence condemned by the State labor statute and is set in a background of coercion and tension.

2. When, to intensify the economic pressure generated by the unlawful picket line, the union engages in false advertising, may a State Court lawfully enjoin all of the concerted unlawful and fraudulent acts which form a part of the union's scheme to impose economic sanctions upon the employer.

3. Whether or not the National Labor Relations Act protected the union from court action in its unlawful, fraudulent and violent picketing.

STATEMENT OF THE CASE

BACKGROUND

In late January, 1955, the Hotel & Restaurant Employees and Bartenders International Union "invited"

one of its organizers, Mr. David Herman, at that time President of a local of said International Union in New York City, to spearhead a drive to organize the employees of the luxury hotels on Miami Beach. He accepted the invitation and therupon the drive commenced. (R. 1104)

Salaries paid by innkeepers to most of their employees have been and always will be comparatively nominal. The reason for this is due to the time-honored custom which impels hotel patrons to tip such employees. This is the main source of their income. Obviously, a union can do little to aid employees in obtaining bigger and better tips. Moreover, Miami Beach is the Gold Coast of Florida, where luxury hotels cater to and attract fabulous personalities and extravagant visitors. Dissatisfaction among the employees was nonexistent. The union did not choose a fertile field and its efforts to persuade the employees to become members of the union met with dismal failure.

A new tack was taken by the union in late March, 1955. It determined to move against the employers through economic sanctions, utilizing pressure on the employer to procure recognition of the union as the bargaining agent for employees, the union did not represent. To this end, a letter dated March 30, 1955, was directed by the organizer (Herman) to the Miami Beach Hotel Association, suggesting that the hotel association and the union organizer meet to discuss and work out labor problems. (R. 45) The Miami Beach Hotel Association is not authorized by its members to bargain for them and it is in no wise concerned with internal problems of management of its members. A deadline of ten days was given to the Hotel Association to meet with the union organizer. (R. 45) No response from the Association was forthcoming, and without further ado, the International Union, through Local No. 255, commenced its campaign of economic sanctions.

The union moved in with its picket lines against the hotels in the following order:

DATE	NAME	LOCATED
April 13, 1955	Saxony Hotel	3201 Collins Ave.
April 13, 1955	Monte Carlo Hotel	6551 Collins Ave.
April 15, 1955	Casablanca Hotel	6345 Collins Ave.
April 15, 1955	Roney Plaza Hotel	2301 Collins Ave.
April 16, 1955	Sherry Frontenac Hotel	6565 Collins Ave.
April 17, 1955	Sans Souci Hotel	3101 Collins Ave.
April 19, 1955	Sorrento Hotel	4391 Collins Ave.
April 21, 1955	Algiers Hotel	2555 Collins Ave.
April 22, 1955	Sea Isle Hotel	3001 Collins Ave.
May 2, 1955	Empress Hotel	4333 Collins Ave.
May 4, 1955	DiLido Hotel	155 Lincoln Road
May 6, 1955	Lombardy Hotel	6305 Collins Ave.
May 23, 1955	Versailles Hotel	3425 Collins Ave.
May 27, 1955	Delmonico Hotel	6398 Collins Ave.
May 31, 1955	President Madison Hotel	3801 Collins Ave.
June 3, 1955	Nautilus Hotel	1825 Collins Ave.
June 7, 1955	Robert Richter Hotel	3301 Collins Ave.
June 8, 1955	Martinique Hotel	6423 Collins Ave.
June 15, 1955	San-Marino Hotel	4299 Collins Ave.
Dec. 21, 1955	Fontainebleau Hotel	4441 Collins Ave.

Each of these hotels is bounded on the east by the Atlantic Ocean and on the west by Collins Avenue. This is a strip of land which varies from 200 feet in depth to approximately 600 feet in depth. The land between 23rd Street and 46th Street on this strip is exclusively occupied by luxury hotels; from 47th Street northward to 59th Street, this strip is occupied by private residences and estates; from 60th Street north to 71st Street, this strip is wholly utilized by luxury hotels. All the hotels cater to tourists and are appointed to afford their patrons the full enjoyment of the climate and amusements of this area. They specialize in the highest quality of service. All hotel business is sensitive to a disruption of service. Luxury hotels are particularly sensitive to any disturbances in the elaborate services provided for their patrons, aimed as they are to the purpose of enabling the visitors to enjoy a pleasant and relaxing vacation.

STEPS IN THE LITIGATION

1. As the union would throw up picket lines, the hotels would respond by filing complaints seeking injunctions in the Circuit Court of the Eleventh Judicial Circuit of Dade County, Florida, a court of general chancery jurisdiction. On April 28, 1955, picket lines had closed off the Saxony Hotel, the Sherry Frontenac Hotel, the Roney Plaza Hotel, the Sorrento Hotel, the Sea Isle Hotel, the Algiers Hotel, the Sans Souci Hotel, the Casablanca Hotel, and the Monte Carlo Hotel, and on that date these hotels had responded by applications for injunctions.

Each of the complaints filed by the hotels in brief alleged that the union had placed a picket line around plaintiff's hotel; that the plaintiff had not refused to negotiate with the union; it had not refused to recognize the union; the union had never advised the plaintiff it was the bargaining agent of plaintiff's employees; no proof was submitted that the union represented the employees; the picket lines were placed by the union without notice to the plaintiff; in truth, the union did

not represent the employees; the picketing was carried on in a violent manner; the union was using force, intimidation and coercion to disrupt the plaintiff's business; through such pressure, it sought to force the plaintiff to deal with the union; the conduct of the union was causing irreparable injury.

Under the filing system used by the Circuit Court of Dade County, Florida, these several cases were assigned to different judges of the court. Counsel for the plaintiffs in these several cases procured the consent of the several judges to sit en banc to hear at one time all these applications for temporary injunction in all nine cases. On April 28, 1955, hearings on the applications commenced before Judges Carroll, Crawford, Cannon and Floyd. (R. 11-13) The Sans Souci Hotel case actually had been assigned to Judge Gordon, but in his absence, Judge Floyd presided. Plaintiffs' testimony was taken before the court on April 28, 29, and 30, 1955. (R. 1096-1296) During the night session on April 29, 1955, Judge Cannon, to whom the Casablanca Hotel and the Sea Isle Hotel cases had been assigned, dropped out of the hearing.

The evidence adduced at these hearings established that no economic issues between the labor union and the hotel were involved. No such issues had prompted the picket line. (R. 1120) That revelation was made to the newspapers by Mr. Herman, the labor organizer. (R. 1120).

The picket lines were thrown up by the union solely in an effort to procure recognition of the union as the collective bargaining agent for the hotel employees of each of the hotels picketed. (R. 1120) Each of the hotel owners and operators testified at the hearings . . . George E. Fox for the Saxony Hotel (R. 1123); Ralph McIntyre for the Lombardy Hotel; Louis Kenin for the Algiers Hotel (R. 1259); Ralph E. Snider for the Sea Isle Hotel (R. 1263); Richard Dolan for the Roney Plaza Hotel (R. 1279); Morris Lansburgh for the Sans Souci and Sherry Frontenac Hotels (R. 1287); Murray Friedman and Bernard Resnick for the Sorrento Hotel (R.

1293-94); Benjamin G. Kline for the Monte Carlo Hotel (R. 1292) . . . that the union had not established and did not attempt to establish to any of the hotel owners that it in fact had been designated collective bargaining agent for their employees. This testimony further established that in no instance did the union afford to the hotel owners and operators a reasonable opporunity to recognize the union or to negotiate with it.

Each of the picket lines was thrown up without any effort having been made on the part of the union to establish to the hotel owners and operators that it had been designated the collective bargaining agent. Ralph E. Snider's testimony (Sea Isle Hotel) is particularly interesting because in truth, Snider wished to negotiate with the union, and met for the purpose of receiving proofs. It is unfortunate that the transcript of the proceedings referred to in the record at page 1266 has not been brought to this Court.

In the Sherry Frontenac Hotel case, there is no denial of the evidence given by Morris Lansburgh, one of the owners of the Sherry Frontenac and Sans Souci Hotels. He testified that on Saturday, April 16, 1955, at 3:30 p.m., a labor organizer (David Herman) called him on the telephone and told him he wanted to negotiate as the representative of the employees of these hotels. (R. 1289) Mr. Herman gave Mr. Lansburgh exactly fifteen minutes to call back with an answer, notwithstanding the fact that Mr. Lansburgh had informed Mr. Herman he wanted first to discuss the matter with his partner (who happened to be in Chicago at the time) and would call him in Chicago. Mr. Herman again demanded that Mr. Lansburgh call back "before 3:45 p.m.". When Mr. Lansburgh failed to do so, he received word at 3:50 p.m. that a picket line was already marching around the Sherry Frontenac Hotel. And, on Sunday morning at 6:30, a picket line was marching around the Sans Souci Hotel.

The evidence adduced at these hearings also amply established the violent conduct of the union.

One witness testified that his car was hit and that he was struck with an automobile tire lug. (R. 1150). Prior to the incident, he had been threatened at the hotel where he worked. (R. 1154).

Another witness, visiting Miami Beach, testified that she was in the car when several men smashed the windows of the car. (R. 1164).

Another witness testified that she had been worried by having pickets snap her picture a number of times. (R. 1175-1176).

Another employee testified that he was living at the hotel because of fear of trouble in the event that he left for home each night; that he had been struck, cursed at, pointed out on the picket line, had his picture taken by the pickets prior to the time he stayed in the hotel. (R. 1177-1179).

A threat was made against one employee to another employee. (R. 1194).

Another witness testified to threats, abusive language, curses and a fight started by pickets (R. 1197-1198).

A waitress testified that as she left the hotel by car, a picket blocked the passage of the automobile, she was threatened, her car was spat on, (R. 1202), and her picture was also taken at the picket line. (R. 1205).

Another witness told of leaving his employment after a fight and after threats had been made against his family and his wife. (R. 1206).

A waitress testified that her car was blocked, she was threatened, and thereafter an attempt was made to force her car off the road. (R. 1212).

A housewife whose husband was employed at the hotel told of being accosted, being subjected to abusive language against her husband, and then hearing her

husband cursed at, and being present when her husband was beaten by several men. (R. 1216). Her husband testified to the same effect. (R. 1218-1219).

An officer observed a picket kick a man walking into one of the hotels. (R. 1227).

An employee testified that his life, his home, his parents and his car were threatened if he returned to work. The windows of his car were thereafter broken, causing him to put his car in storage. (R. 1234).

An employee waiting for a bus got a lift with two men who told him that they were going his way. He was told not to go back to work again, and noticing the car was traveling in the wrong direction, he became frightened and jumped out of the car when it stopped for a light. (R. 1233-1241).

The auditor for one of the hotels found the gasoline tank ripped out of his car and four tires slashed. (R. 1242).

A lobby porter was threatened by three men. (R. 1247).

A waitress was threatened and subjected to annoying, anonymous 'phone calls. (R. 1250).

A police sergeant testified to the existence of twenty-five complaints filed in the City of Miami Beach concerning violence that had arisen during this situation. (R. 1143).

After the plaintiffs rested their cases (R. 1296) at the conclusion of the hearings upon applications for temporary injunction, the trial judges, Carroll, Crawford and Floyd, rendered their order (R. 13-15) denying the temporary injunction.

In this order, the court recognized that the plaintiffs contended that the picketing was "for illegal purposes"

but it declined to pass on this question until final hearing. (R. 14)

Attention is again directed to the fact that at the evening session on April 29, 1955, Judge Cannon withdrew from the hearing (R. 1187-90) His cases involved the Casablanca and Sea Isle Hotels. Subsequently, on the continuation of the hearings in those two cases, Judge Cannon granted injunctions because of the violent manner in which the picketing was conducted by the union.

To the orders denying the temporary injunction, the hotel owners took an appeal by certiorari on May 16, 1955, to the Supreme Court of Florida (R. 263-269). The record was consolidated and the appeal for all intents and purposes was a consolidated appeal. The Supreme Court of Florida reversed the lower court's refusal to grant temporary injunction. (R. 272) All cases were reversed on the authority of the opinion which was entitled in the Saxony Hotel case (R. 16-21) The Sax opinion of reversal was filed May 27, 1955. The lower court (Judge Carroll) in the Sax case conformed to the Supreme Court's decision on May 28, 1955, and rendered a preliminary injunction. (R. 31) On June 2, 1955, temporary injunctions in compliance with the Supreme Court's order, were rendered in the other cases (Judges Crawford, Floyd and Gordon). (R. 543)

On June 4, 1955, Judges Crawford, Floyd and Gordon (Gordon had returned to the City, but was absent on April 28, at the commencement of the hearings) commenced hearings upon a motion to vacate temporary injunctions, which they had two days before entered in compliance with the judgment and decision of the Supreme Court of Florida.

Prior to the commencement of these hearings, and on May 9, 1955, the union filed its answers in each of the cases. In not one of the answers had the union contended that the State Court was without jurisdiction to determine the issues involved and in not one of the answers did the union contend that the exclusive juris-

diction of the controversy vested in the National Labor Relations Board. (R. 23; 535) In each of the answers, the union filed a cross-suit (R. 27; 539) in which it invoked the jurisdiction of the State Court to grant it affirmative relief.

The testimony and evidence adduced at the hearings upon the application to dissolve injunctions is shown in the record at pp. 109-262. This was a continuation of the trial which was commenced on April 28, 1955, except that the Casablanca and Sea Isle Hotels (Judge Cannon) and the Saxony Hotel case (Carroll J.) were no longer involved.

The evidence of the union disclosed that it did not represent a majority of the employees at any of the hotels at the time it had established the picket lines. The union produced its records in the form of "designation cards". These were put in evidence by the union and are the documents which are relied upon by the union to prove its designation as the bargaining agent of the employees.

On June 16, 1955, preliminary injunctions were dissolved by Judges Floyd, Gordon and Crawford. (R. 546-549) The picket lines again went up at the six hotels involved.

The hotels immediately appealed by certiorari the order dissolving temporary injunctions. On June 17, 1955, the hotels applied to the trial court for a supersedeas order by which the force and effect of the order dissolving the injunctions might be suspended pending the appeal.[1] The trial court denied the supersedeas on

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(1) Florida Appellate Rule 5.1—When it shall be made to appear to the lower court that an appeal to review an interlocutory order or decree in equity has been or is about to be taken to the court, the lower court may, in its discretion, grant a supersedeas or stay upon appellant's giving a good and sufficient bond conditional that such appeal shall be taken within ten days, and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, together with such other and further conditions as may be fixed by the lower court in the event the order or judgment of which a review is sought, is not quashed, modified or reversed.

June 17, and 18, 1955. (R. 262; 549) The hotels sought a review of the order denying supersedeas under Florida Appellate Rule 5.10.[2]

On June 24, 1955, the Supreme Court of Florida granted the hotels a supersedeas pending disposition of the second appeal by certiorari. (R. 274; 554) (Upon the granting of supersedeas by the Supreme Court of Florida on June 24, 1955, the picket lines came down again. The force and effect of the supersedeas was to reinstate the preliminary injunctions.)

Thereafter, on June 28, 1955, the union for the first time attempted to assert a lack of jurisdiction in the State Court to hear and determine any of these cases on the ground that exclusive jurisdiction was vested in the National Labor Relations Board. This attempt was made by filing without leave of Court a supplemental answer in the Saxony case. (R. 33) The Saxony Hotel case had come to issue on May 9, 1955. (R. 23) On that date the union filed its answer in the nature of a cross-bill invoking the jurisdiction of the State Court to grant it affirmative relief.

On October 19, 1955, the Supreme Court of Florida granted a writ of certiorari in the Sherry Frontenac, Sans Souci, and other hotel cases above referred to, and thereby reversed the orders of Judges Crawford, Floyd and Gordon, which had dissolved preliminary injunctions. (R. 277-283)

The Supreme Court of Florida in its opinion of reversal made the following findings of fact from the record:

> "This record paints a picture not of employees exercising their right to 'self-organization' or their

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(2) Florida Appellate Rule 5.10—If the lower court refuses to grant a supersedeas or stay, or if any bond required by said court is deemed to be arbitrary or unreasonable or such as is for any other reason not proper, the order of refusal, or the order fixing the terms and conditions of the bond, may be reviewed and overruled, modified or discharged by the Court on motion, provided reasonable notice of the hearing on said motion is given to the adverse party.

right to 'bargain collectively through representatives of their own choosing' but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the 'unlawful purpose' doctrine of Miami Typographical Union v. Omerod, 61 So. 2d 753." (R. 282-283)

We find no place in the record before the Supreme Court of the United States, the evidence (the designation cards) upon which the Supreme Court of Florida concluded that the union did not represent the employees. Nevertheless, there is in the record a brief filed by the appellants reciting exactly what was shown by the designation cards.

"These nine hotels are all appellees herein, namely, the Saxony, controlled by Sax Enterprises, Inc.; the Roney Plaza, controlled by a corporation; Boca Raton Club; the Monte Carlo Hotel, controlled by a corporation of the same name; the Sans Souci

Hotel, controlled by Leevlans corporation; the Sherry Frontenac Hotel, controlled by Harry Levy et al; the Sorrento Hotel, controlled by a corporation of the same name; the Algiers Hotel, controlled by 2500 Collins Avenue corporation; the Casablanca (sic) Hotel, controlled by the Casablanca Operating Company; the Sea Isle Hotel, controlled by a corporation of the same name. At a preliminary hearing on the first (fol. 536) 7 of the aforementioned nine hotels, the Chancellors denied the temporary relief sought, but the Chancellor who heard the evidence and testimony on behalf of the latter two hotels, issued temporary injunctions and based said decrees on the fact that the picket lines were set in a background of violence." (R. 65)

"Those cards indicated that in the Algiers Hotel, one employee had designated the union as his bargaining agent, prior to the picket line; in the Sans Souci Hotel case two employees had designated the union prior to the picket line; in the Monte Carlo Hotel case, none of the employees had designated the union prior to the picket line; in the Sorrento Hotel case, three employees had designated the union prior to the picket line; in the Sherry Frontenac Hotel case, one employee had designated the union prior to the picket line; in the Roney (fol. 539) Plaza Hotel case, no employees had designated the union prior to the picket line." (R. 67)

This disposes of the steps of the litigation in the Saxony, Sherry Frontenac, and Sans Souci Hotel cases up to the final wholesale adjudication in all of the hotel cases.

In the *Versailles Hotel* case, the record clearly indicates that the hotel, prior to the commencement of any picketing or the institution of any litigation, designated an agent to confer with the union representatives, and that a conference was held in the agent's office on May 20, 1955 between the hotel owners and representatives of the union. (R. 354-364)

A casual perusal of the statements made by the union representatives at this conference reveals that

the union would not indicate whom they represented and further whether in fact they represented a majority of the hotel's employees. It is revealed that the union wanted to be recognized as bargaining agent of "ANY" employee it represented. At this meeting, the hotel attempted to establish satisfactory mechanics which would make it possible for the union to indicate and designate the employees it represented. As this conference bears out, and as subsequent actions of the union indicate, the union refused to pursue further any negotiations or adopt any mechanics which might be satisfactory to both parties whereby the employees the union claimed to represent, might be identified.

Upon the conclusion of this conference, the parties were to meet again, but notwithstanding this agreement, the union elected to abandon further discussions and addressed its communication to the Versailles Hotel on June 6, 1955. (R. 310)

The union then commenced picketing on June 11, 1955, and the Versailles Hotel filed its complaint for injunction (R. 309) on June 15, 1955.

The union filed its supplemental answer on JUNE 28, 1955, in which it urged that the Circuit Court of Dade County, Florida, was without jurisdiction to try the cause because the National Labor Relations Board had exclusive jurisdiction. (R. 334)

Thereafter, on July 6, 1955, the union filed its answer in which it sought affirmative relief from the State Court. (R. 516-522). On September 22, 1955, Judge Floyd denied application for temporary injunction. (R. 379)

An appeal by certiorari was filed to said order in the Supreme Court of Florida on September 26, 1955, by the hotel. Thereafter, on December 14, 1955, the Supreme Court of Florida reversed the trial court on the authority of the Boca Raton opinion. (R. 389)

This brings the Versailles Hotel case down to the date that final decrees were entered, en masse, in all the hotel cases.

In the Robert Richter Hotel case, the issues presented are moot. The former owners, Morris Lansburgh, et al., no longer have any interest in this hotel, direct or indirect, nor do they operate the same. All factual situations which are set forth as applicable to the Versailles Hotel are equally applicable to the Robert Richter Hotel case with the exception of dates. The conference referred to which was held for the Versailles Hotel included the Robert Richter Hotel (R. 356)

The union established a picket line in front of the San Marino Hotel on June 15, 1955. Complaint was filed against the union in this hotel case on June 17, 1955. (R. 403) The same pattern of prior negotiation between the hotel and the union had transpired. The union had communicated with the hotel to the effect that the union represented a majority of the employees. The hotel ascertained that it only represented 2 of the employees. (R. 406)

On July 6, 1955, the union filed its answer to the complaint and in its answer it sought affirmative relief. (R. 412-419) Also, on July 6, 1955, the union filed a separate paper it termed a supplemental answer (R. 431) in which it set forth that the trial court was without jurisdiction to try the case because exclusive jurisdiction was vested in the National Labor Relations Board.

Testimony was taken on the complaint and the answer on July 9, 1955. (R. 437-499)

At the conclusion of the hearing, the Court granted temporary restraining order (R. 500) and granted the union's prayer in its answer, for appointment of a commissioner to conduct a secret ballot of the employees. In this order, the court found that only 3 employees had designated the union as their bargaining agent at the time the picket line was thrown up. (R. 500) A formal decree was thereafter rendered by the court on July 11,

1955. (R. 434) The court found no strike was in process at the San Marino Hotel (R. 435) and enjoined the union from falsely advertising. *The Court found that the allegations with respect to interstate commerce had not been supported by the evidence.*

Thereafter, the San Marino Hotel prosecuted an appeal from the court's decree. On January 13, 1956, the Supreme Court reversed that portion of the decree of the lower court which appointed a commissioner to conduct an election at the hotel. This brings the San Marino down to final hearing.

The picketing commenced at the Martinique Hotel on June 8, 1955. The hotel filed its complaint for injunction, the allegations of which followed the usual pattern set in the other injunction suits, on June 10, 1955. (R. 1045-1055) On June 16, 1955, the union filed its answer (R. 1062-1068) in which it sought affirmative relief.

Application for injunction was heard on affidavit and preliminary injunction was granted on June 17, 1955. (R. 1080)

On June 28, 1955, the union filed a supplemental answer in which it averred that the court was without jurisdiction because exclusive jurisdiction of the action was vested in the National Labor Relations Board. Thereafter, the case was submitted under a general stipulation to the court for rendition of final decree.

The Miami Colonial Hotel case followed the usual pattern. Complaint was filed on May 28, 1955, and consolidated hearing on the Miami Colonial, McAllister and Biscayne Terrace Hotels commenced on the night of May 28, 1955, before Judge Giblin. (R. 668-779) The oral opinion of the court was rendered enjoining the union. (R. 780)

Thereafter, in all twenty-two of the hotel cases, the plaintiffs and the union stipulated that final decrees might be entered upon the record that had theretofore been made in each case on the preliminary hearings

"with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, . . ."

It was further stipulated that the testimony would be objected to on the grounds that it was was immaterial and irrelevant, and that "Final Decree be entered by the Chancellor upon the record as now made . . .". (R. 567-568)

Thereafter, without further hearings, the trial courts were presented with final decrees making the preliminary injunctions permanent. All of these were appealed to the Supreme Court of Florida.

One brief was filed by the union on "appeal of the twenty-two hotel cases from the Circuit Court of the Eleventh Judicial Circuit". (R. 58)

Each of the cases were affirmed per curiam in the same form on the authority of the Fontainebleau Hotel case. (R. 1006) The Fontainebleau Hotel opinion is reported in 92 So. 2d 415.

The Nautilus, Lombardy, Delmonico and President Madison Hotels, we believe, are actually not now involved. We are informed that some of these hotels have already signed contracts with the union and the owners of the others have long since lost their leases and no longer operate the hotels.

ARGUMENT

We shall consider, in this Argument, the first and second questions:

1. Whether a State Court may enjoin picketing where:

(a) The objective sought to be achieved by the pickets and the Labor Union they represent, is unlawful and contrary to the public policy of the State;

(b) The picket signs are untruthful;

(c) The picketing is accompanied by acts of violence or near-violence condemned by the State Labor Statute and is set in a background of coercion and tension.

2. When, to intensify the economic pressure generated by the unlawful picket line, the Union engages in false advertising, may a State Court lawfully enjoin all of the concerted unlawful and fraudulent acts which form a part of the Union's scheme to impose economic sanctions upon the employer.

The State of Florida has adopted what is commonly known as "The Right to Work Law". The Constitution of the State of Florida, in the Declaration of Rights, Sec. 12, guarantees that:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

In the adoption of the Right to Work Law, the legislature of the State of Florida declares:

> "The right to work is the right to live." (Sec. 447.05 Fla. General Laws)

Employees are guaranteed the right to self-organization and to bargain collectively "through representation of their own choosing". (Fla. Statutes 447.03) The act condemns any conduct which has as its purpose, the intimidation of any employee in the enjoyment of his legal right to bargain collectively through an agent "of his own choosing".

This Statute, like Right to Work Statutes of other states, has been held to be consistent with the Federal Constiution, and particularly the 14th Amendment thereof. *Local Union No. 10 vs. Graham 345 U. S. 192.*

Picketing of an employer's place of business by a Union for the purpose of denying to the employees the

rights guaranteed to them under lawful State statutes is unlawful conduct and picketing under such circumstances constitutes an effort to achieve an unlawful purpose.

Attention is directed to Sec. 447.14 of the Florida Statutes (Note (1)) which renders it a misdemeanor to deny to an employee his right, free of intimidation, to bargain through a representative of his own choosing.

The Florida Courts found, in each of the twenty-two hotel cases, that at the time the Union threw up its picket line and utilized other methods of economic sanction, it did not represent the employees of the hotels. It was the avowed purpose of these picket lines and the false advertising that accompanied it, to force the employers to recognize the Union as the bargaining agent of the hotels' employees. Upon the recognition of the Union, the next step was to be the negotiation of a contract with the hotels on behalf of the employees.

It would be of no value to the Supreme Court of the United States for us to review and comment on the decisions in the *Thornhill case 310 U. S. 88,* in the *Swing case 312 U. S. 321* and the *Gazzam case 339 U. S. 532.* The Supreme Court of the United States has recently reconsidered each and every one of these opinions and decisions. In the case of the *International Brotherhood of Teamsters Union vs. Vogt, Inc., 354 U. S. 284* it has answered adversely the contention of the Petitioners that the State Court is without power under a State Right to Work Law to enjoin picketing and false advertising connected therewith which has for its purpose the violation of the rights guaranteed to labor by the State's Right to Work Law. By the *Vogt case* the Court sustains the right and power of the Courts of Florida to enjoin picketing under the circumstances presented by this record.

The facts in *Pappas v. Stacey* referred to *(151 Maine 56, 116 Atl. 2d 497)* are exact in every detail with the facts reflected by the records of the cases now under consideration. In disposing of these same questions

again posed here by the Petitioners, the Supreme Court of the United States in the *Vogt case* stated:

> "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy.
>
> "In the light of this background, the Maine Supreme Judicial Court in 955 decided, on an agreed statement of facts, the case of Pappas v. Stacey, 151 Me. 36, 42, 116 A. 2d 497, 500. From the statement, it appeared that three union employees went on strike and picketed a restaurant peacefully 'for the sole purpose of seeking to organize other employees of the Plaintiff, ultimately to have the Plaintiff enter into collective bargaining and negotiations with the Union * * *.' Maine had a statute providing that workers should have full liberty of self-organization, free from restraint by employers or other persons. (R. S. 1954, c. 30, §15) The Maine Supreme Judicial Court drew the inference from the agreed statement of facts that 'there is a steady and exacting pressure upon the employer to interfere with the free choice of the employees in the matter of organization. To say that the picketing is not designed to bring about such action is to forget an obvious purpose of the picketing—to cause economic loss to the business during noncompliance by the employees with the request of the union.' It therefore enjoined the picketing, and an appeal was taken to this Court.
>
> "The whole series of cases discussed above allowing, as they did, wide discretion to a State in the formulation of domestic policy, and not involving a curtailment of free speech in its obvious and accepted scope, led this Court, without the need of further argument, to grant appellee's motion to dismiss the appeal in that it no longer presented a substantial federal question. 350 U. S. 870, 76 S. Ct. 117, 100 L. Ed. 770."

The Petitioner expresses the hope that the Supreme Court of the United States will recede from the position

taken in the *Vogt case*. However, nothing advanced in their Brief suggests any justification for such a reversal of position.

3. Whether or not the National Labor Relations Act protected the union from court action in its unlawful, fraudulent and violent picketing.

We respectfully suggest that this question is not properly raised by the record. The petitioner-union sought the State Court's jurisdiction on its cross-bills or answers seeking affirmative relief. It did not, in a single answer filed by it, initially raise the question of the want of jurisdiction in the State Court or suggest that the exclusive jurisdiction of the several causes was possessed by the National Labor Relations Board.

See:

Saxony	Answer filed May 9, 1955	(R. 23)
Sans Souci	Answer filed May 9, 1955	(R. 90)
Sherry Frontenac	Answer filed May 9, 1955	(R. 535)
Lombardy	Answer filed May 12, 1955	(R. 585)
Miami Colonial	Answer filed June 3, 1955	(R. 782)
Delmonico	Answer filed June 15, 1955	(R. 831)
President Madison	Answer filed June 15, 1955	(R. 889)
Nautilus	Answer filed June 16, 1955	(R. 814)
Robert Richter	Answer filed June 16, 1955	(R. 956)
Martinique	Answer filed June 16, 1955	(R. 1062)
Versailles	Answer filed July 6, 1955	(R. 315) *
San Marino	Answer filed July 6, 1955	(R. 412)

On June 19, 1955, the union first suggested in the State Court proceedings that the National Labor Relations Board has exclusive jurisdiction. This was accom-

* The so-called supplemental answer was filed before the general answer which asked for affirmative relief.

plished in the Saxony case by the union filing what it termed a supplemental answer (R. 33). This answer was filed out of turn.[3]

In the six cases initially filed before Judges Crawford, Floyd and Gordon, this so-called supplemental answer never appeared in the record until after the final decree had been rendered and the case was on appeal to the Supreme Court of Florida. Under the stipulation of counsel of February 24, 1956, it was agreed that these supplemental answers had been misfiled and under said stipulation they were made a part of the record. (See, form of the misfiled answers' stipulation, R. 284; 564.)

At the time this stipulation and these misfiled answers were placed in the record, the trial court had lost jurisdiction of the causes. In only two cases was this supplemental answer timely filed so as to become a part of the record in the causes. In the first, the San Marino case, the union filed its answer on the merits on July 6, 1955 (R. 512) and on the same day, filed the so-called supplemental answer dealing with the lack of jurisdiction in the State Court because of the National Labor Relations Act. On July 9, 1955, this cause proceeded to trial. No evidence was adduced to sustain the allegations of the supplemental answer. On the issues made by this answer, the court found:

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(3) Florida Rules of Civil Procedure. Rule 1.15 Amended and Supplemental Pleadings.

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

"The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter." (R. 434)

It is interesting to note that the trial court in its decree granted to the union the relief sought by it on its cross-bill. The San Marino case is the only case in which it appears that this supplemental answer was brought to the attention of the trial court.

In the Versailles Hotel case, the union timely filed its supplemental answer. This case initially fell in Judge Cannon's division. It was filed on June 15, 1955 (R. 298). On June 28, 1955, the union filed its supplemental answer (R. 334) objecting to the State Court's jurisdiction. Thereafter, the cause found its way into Judge Floyd's division and the union filed an answer on the merits on July 6, 1955, in which answer affirmative relief was sought. (R. 315) Judge Floyd entered an order denying the temporary injunction on September 22, 1955. (R. 379) However, no evidence to sustain the supplemental answer was offered in any form by the union. (See, Stipulation in Re Final Hearing, R. 393.)

This union apparently had always assumed a position contrary to that indicated in the supplemental answers. (See, *The Hotel Association of St. Louis case, 92 Decisions and Orders of NLRB 1389.*) In that case, the union appeared as an intervenor.

Only after the tide of fortune commenced to turn against the union in these cases, did it determine to change positions. On June 29, 1955, it filed its appeal before the National Labor Relations Board. *Hotel Employees Local No. 255, et al., v. Boyd Leedom, etc., et al., 147 F. Supp. 306.*

Moreover, the National Labor Relations Board had adjudicated in 1949 that the cessation of the operations of a tourist hotel business would affect commerce so inconsequentially as to render the business outside the operation of the National Labor Relations Act. *In the Matter of White Sulphur Springs Co., 9 R C 392, decided*

September 19, 1949, 85 Decisions and Orders NLRB 1487.

The case of *Guss v. Utah Labor Relations Board, 353 U. S. 1,* has no application to the facts of the cases at bar, for in that case, it had been agreed that the appellant was "engaged in commerce within the meaning of Section 2(6), (7) of the National Labor Relations Act." So in that case, the jurisdiction of the National Labor Relations Board was conceded and the problem presented was whether under such circumstances a State agency could assume jurisdiction in a labor controversy which admittedly was within the protective provisions of the National Labor Relations Act. The court held that the act preempted the field.

The case of *San Diego Building Trades Council v. Garmon, 353 U. S. 26,* is also inapplicable to the cases at bar, for there again, the employers in their pleadings alleged that they "were in interstate commerce and that the contract sought by the unions would violate the Act." (National Labor Relations Act.)

There is a marked difference between the facts in the case of *Amalgamated Meat Cutters & Butcher Workmen of North America v. Fairlawn Meats, Inc., 353 U. S. 20* and the cases at bar. In that case a clear-cut issue was raised and was urged at every stage in the proceedings in the State court, that the Court was without jurisdiction to hear the cause. In that opinion, Mr. Chief Justice Warren carefully pointed out: "the petitioners objected throughout that the jurisdiction of the National Labor Relations Board was exclusive." (p. 605)

This is not so in the cases at bar. The union did not object throughout that the jurisdiction of the National Labor Relations Board was exclusive. In every case, it initially sought relief in the State Court proceedings. As long as it was victorious in the State Court it did not see fit to protest the Court's jurisdiction. If what it filed in the trial court amounts to a protest of jurisdiction at all, it was in the form of an imperceptible murmur not audible to the chancellors or the Supreme Court of Florida.

The petitioner seeks to strengthen this weakness in its cause by making the brief it filed in the Supreme Court of Florida a part of the record. Little or no comfort is afforded petitioner from the examination of their discussion of this point before the Supreme Court of Florida. (R. 62-63)

The Circuit Court of Dade County, Florida, is a court of general jurisdiction. In the exercise of its traditional and ancient chancery jurisdiction, it has the power to enjoin defendants from unlawfully interrupting and interfering with a plaintiff's business when such conduct causes irreparable injury. In order for such a court of general jurisdiction to lose its jurisdictional power to act because of the existence of facts not shown by the pleading which initially activated its jurisdiction, it is necessary and essential that a party to the litigation, by a recognized form of pleading and proof, establish in the cause the facts which oust the court's jurisdiction.

It seems obvious to us from the decisions of the Supreme Court of the United States, in the *Vogt, Gazzam* and *Pappas cases, supra,* that the State Court's jurisdiction remains unimpeached and undefeated if no proper pleading and proof testing the jurisdictional question is presented to the trial court.

In labor cases the Supreme Court of the United States has from time to time established that the State Courts have power to enjoin violence and where a pattern of violence is established, all acts which form a part of that pattern, may be enjoined. *Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, 312 U. S. 287.*

This reserved State power is exercised by a State agency in the public right even though such State agency is activated by the complaint of a person suffering an injury to his private rights. The right of the State is embedded in its police power permitting it to maintain peace and order within its borders.

Obviously, if two hotel buildings side by side are owned by the same person and the union throws a separate picket line around each hotel building, the fact that extreme violence is manifested around one building, but not around the other would not incapacitate the State Court to enjoin picketing around both, where the coercive pattern encompasses the entire locality. The fact of dspersed ownership of the hotels does not deny the State the power to control through the State courts, the entire pattern of violence imposed by the union. Some acts of intimidation appeared in every picket line. The violence was extreme at the Sea Isle Hotel, located at 3001 Collins Avenue. Therefore, upon a consideration of that record alone, the State Court enjoined the picketing and the acts of intimidation. At the Empress Hotel, 4333 Collins Avenue, the violence was exceedingly extreme. A description thereof can be found in the brief filed before the Supreme Court of Florida. (R. 1035-39)

On the record made in that case, the trial court enjoined the union from picketing and from engaging in other acts of violence and coercion.

At the Casablanca Hotel, 6345 Collins Avenue, the record in that case established repeated and extreme acts of violence. An injunction was granted by the trial court against the union by reason thereof.

On the final appeal before the Supreme Court of Florida, all twenty-two hotel records were presented at one time and were considered by the Court. The written arguments were contained in one brief. The cases were submitted as presenting a question which was common to all. Upon examination of all these records, the Court affirmed each of these cases on the authority of the Fontainebleau Hotel case. For the first time, the Supreme Court of Florida had presented to it the overall true picture of the mass assault by this union upon the peace, security and welfare of a limited locality.

In the Fontainebleau Hotel case which is the basis for the affirmance of the injunctive orders in all cases, the Supreme Court of Florida said:

> "The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. *It was accompanied by acts of violence or near violence condemned by the statute.*" (Petitioner's Brief, App. A, p. 52) (Emphasis supplied.)

This powerful and violent movement in a small and limited area against a single industry, posed a serious threat to the welfare and peace and security of the area. This activated the State's reserved power to defend itself.

Attention is directed to the fact that the union did not file a petition for certiorari in those cases where the violence was so predominant. Therefore, the full record in these cases which was before the Supreme Court of Florida is not before the Supreme Court of the United States.

CONCLUSION

We respectively submit that the Supreme Court of Florida did not err in sustaining the power of the State trial court to enjoin the activities of the union under the circumstances disclosed by the record.

Respectfully submitted,

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